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Supreme Court of the United States

OCTOBER TERM, 1948

No. 500

**THE UNION NATIONAL BANK OF WICHITA,
KANSAS, APPELLANT,**

vs.

CARL C. LAMB

APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSOURI

FILED JANUARY 5, 1949

SUPREME COURT OF THE UNITED STATES

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No. 500

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APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSOURI

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No. 40684

**THE UNION NATIONAL BANK OF WICHITA, KANSAS, a National
Banking Corporation, Appellant,**

vs.

CARL C. LAMB, Respondent

**Appeal from the Circuit Court of Jackson County,
Missouri, at Kansas City**

Honorable James W. Broaddus, Judge

Agreed Transcript of the Record

This action was commenced on the 13th day of December, 1945, by Appellant filing its Petition on Judgment in the office of the Clerk of the Circuit Court of Jackson County, Missouri, at Kansas City. A copy of said petition upon which this case was tried, omitting caption and signatures is in words and figures, as follows, to-wit:

IN CIRCUIT COURT OF JACKSON COUNTY

"PETITION ON JUDGMENT

1. Plaintiff is and at all times mentioned herein was a national banking corporation duly chartered and existing under the laws of the United States, having its principal office and place of business in Wichita, Kansas.

[fol. 2] 2. Defendant formerly resided in Denver, Colorado, and now resides in Jackson County, Missouri.

3. The District Court for the Second Judicial District of the State of Colorado embracing the city and county of Denver, Colorado is and at all times herein mentioned was a Court of Record having common law jurisdiction, a seal and a clerk. Said court is and was vested with original general jurisdiction of all cases at law or in equity under the Code of Civil Procedure Volume 1, 1935 Colorado Statutes annotated and prior enactments carried into said 1935 Statutes. The acts, proceedings, judgments and rec-

ords of said court duly certified under the Act of Congress (28 U.S.C.A. Sec. 687; R.S. Mo. 1939, P3985) are entitled to full faith and credit under Section 1, Article IV, of the Constitution of the United States.

4. Attached and made part hereof is a duly certified copy in the form prescribed by said Act of Congress and Section 1864 R.S. Mo. 1939 of a judgment duly rendered in the exercise of its jurisdiction of said District Court mentioned in paragraph 3 herein in a certain cause No. 99,530 wherein the plaintiff herein duly recovered judgment against defendant on December 8, 1927, for \$3493.01 and costs, and of an order and judgment of said court in the exercise of its jurisdiction duly made and entered in said cause on October 27, 1945, which adjudged that no part of said judgment or costs was ever paid or satisfied and [fol. 3] ordered, adjudged and decreed that said Judgment of December 8, 1927 for \$3493.01 and costs in favor of plaintiff and against defendant be and the same was revived.

5. Said judgment of revival of October 27, 1945, was and is duly authorized by and conforms with the provisions of Chapter 93, Section 2, 1935 Colorado Statutes annotated. Plaintiff is entitled to enforce payment of said judgment under the laws of Colorado and to have execution therefor in the sum of \$3493.01 with simple interest thereon from December 8, 1927, at 8% per annum to March 7, 1935, and at the rate of 6% per annum on the original sum from and after March 7, 1935, until paid, under the provisions of Chapter 88, Section 2, of 1935 Colorado Statutes annotated, as amended effective March 7, 1935, plus the assessed costs of \$9.00.

6. Said judgment has the force and effect of and plaintiff is entitled to recover the amount thereof in this state and to have the same faith and credit given thereto as same is and would be given in Colorado as provided by Section 1864 R.S. Mo. 1939.

7. No part of said judgment or costs has been paid but the full sums here-before mentioned are lawfully due to and owing to plaintiff as the holder and owner of said judgment.

Wherefore, plaintiff prays judgment against defendant for \$3493.01, with simple interest at 8% per annum thereon [fol. 4] from December 8, 1927, to March 7, 1935, and at the rate of 6% per annum thereafter until paid, plus \$9.00 for costs assessed in said District Court, together with its costs herein.

[fol. 5]

EXHIBIT TO PETITION

IN THE DISTRICT COURT IN AND FOR THE CITY AND COUNTY OF
DENVER AND STATE OF COLORADO

STATE OF COLORADO,

City and County of Denver, ss:

Pleas in the District Court in and for the City and County of Denver, State of Colorado, in the Fifth Division thereof, before the Hon. W. A. Black, one of the Judges of the Second Judicial District of the said State, at a term thereof begun and held at the City and County Building in Denver, in said county, on the second Tuesday (it being the Eleventh day) of September, A. D. One Thousand Nine Hundred Forty-five.

Present: Honorable W. A. Black, one of the Judges of the District Court; James T. Burke, Esq., District Attorney of said District; Robert J. Kirschwing, Esq., Manager of Safety and Excise and Ex-Officio Sheriff of said County; John H. Winchell, Esq., Clerk of said Court.

[fol. 6] Be it remembered, That heretofore, and on to-wit, the 8th day of December A. D. 1927, the same being one of the regular juridical days of the September A. D. 1927 Term of Court, the following proceedings, inter alia, were had and entered of record in the Judgment Book, to-wit:

99530

THE UNION NATIONAL BANK OF WICHITA, KANSAS, a Corporation,

vs.

CARL C. LAMB

Money Demand

The Court having this day ordered that judgment be entered herein in accordance with the prayer of the complaint, upon default; now therefore;

4

It is considered by the Court that the plaintiff do have and recover of and from the said defendant Carl C. Lamb the sum of thirty-four hundred ninety-three dollars and one cent (\$3493.01), together with its costs in this behalf laid out and expended, to be taxed, and have execution therefor. [fol. 7] And afterwards, and on to-wit, the 27th day of October A. D. 1945, the same being one of the regular juridical days of the September A. D. 1945 Term of said Court, the following further proceedings, inter alia, were had and entered of record in said Court, to-wit:

99530

THE UNION NATIONAL BANK OF WICHITA, KANSAS, a
Corporation,

vs.

CARL C. LAMB

ORDER OF COURT

It appearing from the files and records of this Court in the above entitled matter that notice of the motion to revive judgment and the motion to revive judgment were duly served upon the defendant herein in accordance with law and with Rule 4 of the Rules of Civil Procedure and that the said notice of the motion to revive judgment and the motion to revive judgment were duly served on defendant by personal service on the 15th day of October, 1945; that more than ten (10) days has expired since the defendant was served as aforesaid; and that the defendant has not otherwise entered his appearance or made answer or other response to said notice;

And it further appearing, and the Court so finds, that [fol. 8] said judgment, the principal amount due thereon, and all costs and interest thereon, are wholly unpaid and unsatisfied and that no part thereof has ever been paid or satisfied;

Now, Therefore, Be It and It Is Hereby Ordered, Adjudged and Decreed, that the judgment entered against the defendant in the above entitled cause on the 8th day of December, 1927, be, and the same is hereby revived.

[fols. 9-11] Certificates to foregoing exhibit omitted in printing.

[fol. 12] Thereafter, and within due time, the defendant filed his answer, which said answer, omitting caption and signature is in words and figures, as follows:

IN CIRCUIT COURT OF JACKSON COUNTY

"ANSWER"

1. Defendant admits the allegations contained in Paragraph 1 of plaintiff's petition.

2. Defendant admits the allegations contained in Paragraph 2 of plaintiff's petition.

3. Defendant admits that a judgment was rendered in favor of plaintiff and against defendant by the District Court for the Second Judicial District of the State of Colorado on December 8, 1927, in the sum of Three Thousand Four Hundred Ninety-three Dollars and One Cent (\$3,493.01) and costs.

4. Defendant admits that on the 1st day of December, 1945, an order of revivor of said judgment described in Paragraph 3 hereof was entered by the District Court for the Second Judicial District of the State of Colorado, but denies that the motion to revive said judgment was served on defendant by personal service on October 15, 1945, as recited in said order of revivor.

5. Defendant, for further answer, alleges that the judgment rendered in favor of plaintiff and against defendant by the District Court for the Second Judicial Circuit of the State of Colorado on December 8, 1927, in the sum of Three [fol. 13] Thousand Four Hundred Ninety-three Dollars and One Cent (\$3,493.01) and costs has been fully paid and satisfied and was so paid and satisfied on December 9, 1937 and defendant states that there is not now and was not at the time of the attempted revivor of said judgment on December 1, 1945, anything due and owing on said judgment.

6. Defendant, for further answer, alleges that the judgment rendered in favor of plaintiff and against defendant by the District Court for the Second Judicial Circuit of the State of Colorado on December 8, 1927, in the sum of Three Thousand Four Hundred Ninety-three Dollars and One Cent (\$3,493.01) and costs, is barred by the Statutes

of Limitations in force and effect in the State of Missouri, R. S. 1939, Section 1038.

7. Defendant, for further answer, denies each and every allegation in plaintiff's petition, except those matters which have been expressly admitted in this answer.

Wherefore, having fully answered, defendant prays that he be discharged with his costs herein expended."

[fol. 14] Thereafter, and on April 3, 1947, the plaintiff, filed its interrogatories to defendant under Section 85, General Code of Civil Procedure, which said interrogatories to defendant, omitting caption, and signatures is in the following words and figures:

IN CIRCUIT COURT OF JACKSON COUNTY

INTERROGATORIES TO DEFENDANT UNDER SECTION 85, GENERAL CODE OF CIVIL PROCEDURE

The plaintiff submits the following interrogatories under Section 85, General Code of Civil Procedure (Laws of 1943, p. 379) to be answered by the defendant Carl C. Lamb, fully and in writing, under oath, and duly signed by said defendant, within fifteen days after the date of service hereof, as follows, to-wit:

1. On or about October 15th, 1945, was a notice personally delivered to you in substantially the following form, to-wit:

In the District Court in and for the City and County of Denver, State of Colorado

Civil Action No. 99530

Div. 5

THE UNION NATIONAL BANK OF WICHITA, KANSAS, a
Corporation, Plaintiff,

vs.

CARL C. LAMB, Defendant

NOTICE

To Carl C. Lamb, defendant in the above named cause,
You Will Please Take Notice that the Union National Bank

[fol. 15] of Wichita, Kansas, a corporation, the plaintiff in the above titled cause, has filed its Motion to Revive Judgment on the 13th day of October, 1945. A copy of said Motion to Revive Judgment is attached hereto. Said Motion requests that certain judgment entered in the above entitled cause on December 8, 1927, be revived in accordance with Rule 54 (h) of the Rules of Civil Procedure.

You Are Hereby Required to appear and show cause within ten (10) days after service of this notice upon you why said judgment should not be revived, and this you shall nowise omit to do.

John H. Winchell, Clerk of the District Court, by
John T. Doyle, Deputy Clerk.

Dated October 13, 1945.

2. On or about October 15th, 1945, was a copy of 'Motion to Revive Judgment' personally delivered to you in substantially the following form, to-wit:

In the District Court in and for the City and County of
Denver, State of Colorado:

Civil Action No. 99530

Div. 5

THE UNION NATIONAL BANK OF WICHITA, KANSAS, a
Corporation, Plaintiff,

vs.

CARL C. LAMB, Defendant

MOTION TO REVIVE JUDGMENT

[fol. 16] Comes now the plaintiff, above named, by its attorneys Lon W. Marshall and Schaetzel & Knight, and shows to the Court that on December 8, 1927, a judgment was duly and regularly entered in and by this Court in the above entitled cause in favor of the plaintiff above named and against the defendant above named in the sum of \$3493.01 plus costs in the sum of \$9.00, and that said judgment remains wholly unpaid and unsatisfied, and that the amount now due and unsatisfied thereof is \$3493.01, plus

\$9.00 costs and plus interest at the legal rate since December 8, 1927.

Wherefore, plaintiff moves that said judgment be revived and that pursuant to Rule 54 of the Rules of Civil Procedure, the Clerk issue a notice requiring the defendant to show cause why said judgment should not be revived.

The Union National Bank of Wichita, Kansas, a Corporation, Plaintiff, by Don W. Marshall and Schaetzle and Knight, 322 Colorado Nat'l Bank Bldg., Denver, Colorado, MA 5344, Attorneys for Plaintiff.

Wichita, Kansas.

3. What payments, if any, have you made to apply on the judgment of December 8th, 1927, which is described and mentioned in the petition?

4. State the dates, amounts, and to whom each and all of such payments, if any, were made?

5. Have you ever paid money or valuables on the judgment [fol. 17] of December 8th, 1927, to any person other than plaintiff?

6. If your answer to Interrogatory No. 5 is 'Yes,' state the times, amounts, and to whom all of such payments were made.

Thereafter, and on April 8, 1946, the defendant filed his answers to interrogatories, which said answer to interrogatories, omitting caption, is in the following words and figures:

IN CIRCUIT COURT OF JACKSON COUNTY

"DEFENDANT'S ANSWERS TO INTERROGATORIES

1. Yes.
2. Yes.
3. No money payments have been made.
4. (See answer to Interrogatory 3.)
5. No.

(Signed) Carl C. Lamb, Defendant.

Subscribed and sworn to before me this 8th day of April 1946. Theodore F. Houx, Jr., Notary Public. (Seal.) My commission expires Jan. 10, 1948.

[fol. 18] IN CIRCUIT COURT OF JACKSON COUNTY

Transcript of Proceedings

Be It Remembered, that on Monday, the 21st day of April, 1947, the same being the 37th day of the regular March, 1947, term of said court, the above entitled and numbered cause coming on regularly for trial before the Honorable James W. Broadbush, Judge of said Court, the following proceedings were had and entered of record, to-wit:

APPEARANCES

For the Plaintiff: Mr. Maurice J. O'Sullivan and John J. Killiger, Jr.

For the Defendant: Mr. Cornelius Roach.

[fol. 19]

OFFER IN EVIDENCE

The plaintiff to sustain its case offered and introduced in evidence, the authenticated proceedings in the Colorado District Court, which were attached to and made part of the original petition filed, together with the Interrogatories to defendant and defendant's answers thereto as heretofore shown herein, over the following objections and exceptions of the defendant, to-wit:

[fol. 20] OBJECTIONS AND EXCEPTIONS OF DEFENDANT

There are two propositions we submit to your Honor. The first is this. By its very terms this suit is outlawed. Here is a judgment in Colorado entered in 1927, no attempt is made of revival until 1945, that is some eighteen years later. No attempt of revival of any kind. Now, the statute here clearly provides that any judgment of this or any other state shall be conclusively presumed to be paid in ten years except and unless it has been revived during that ten year period. The other exception, there has been no payment entered of record within that original ten year term. The record must be preserved under the terms of this statute, if the Court please, it is handled on the basis as a rule of evidence. I am making my proper record of objection [fol. 21] to the introduction of the evidence of plaintiff.

Mr. Killiger: I intend to submit on the pleadings and interrogatories.

Mr. Roach: If he is not going to offer his judgment in evidence—

Mr. Killiger: You have admitted it in your pleadings.

Mr. Roach: I haven't admitted it.

Mr. Killiger: If you want to put it on that basis I can offer the original judgment.

Mr. Roach: I think it is necessary in this case. The statute provides that any revival not only must be in the first ten year period but must be on personal service. I want to say this: There is no question here, as I understand, Mr. Killiger, that the service on the revival proceedings were not by personal service?

Mr. Killiger: The service was by the Sheriff of Jackson County.

Mr. Roach: And by mail to Jackson County?

Mr. Killiger: I don't recall, that probably is so.

Mr. Roach: Mr. Lamb was not served with process in Colorado?

Mr. Killiger: That is right.

Mr. Roach: In the revival proceedings?

Mr. Killiger: That is right.

Mr. Roach: Therefore the statute to revive a judgment [fol. 22] which will support a subsequent action is based upon personal service and there is no personal service here.

Now, Mr. Killiger will raise the question of the full faith and credit clause. I want to say to you the Missouri Statute, Section 1038, does not contain that clause. It has been held and held a number of times that the full faith and credit clause only extends to—every state has the right to enact a statute of limitations. Of course in this instance the same rule applies to a Missouri judgment as to a foreign judgment. It is perfectly clear in this matter that if this had been a Missouri judgment, not a Colorado judgment, that it would be outlawed by the terms of this statute and no one can conceive that the Legislature of this state thought of giving a foreign credit or greater rights in the State of Missouri than their own creditors. I think the Court on examining the authorities will be thoroughly satisfied. This being a rule of evidence I think it is unnecessary for the plaintiff to proceed to offer evidence at this time. After the opening statement of counsel for the plaintiff and my opening statement I move to dismiss the

proceedings on the ground that the pleadings and the judgment, a copy of which is attached to the petition, has been outlawed by the provisions of Section 1038 of the Revised Statutes of Missouri 1939 and that no proceeding may be founded upon that judgment.

[fol. 23] The Court: That goes to the entire case, Mr. Roach, I would rather determine that later, if you please, sir.

Mr. Killiger: Do you want me to offer this judgment in evidence at this time?

Mr. Roach: I think it is necessary.

OFFER IN EVIDENCE

Mr. Killiger: I offer in evidence the judgment of the District Court, State of Colorado, rendered in September, 1945, a copy of which was duly authenticated by the Act of Congress and is attached to the petition in this case (Plaintiff's Exhibit 1 was Marked for Identification).

OBJECTIONS OF DEFENDANT

Mr. Roach: The defendant objects to the offer of Plaintiff's Exhibit No. 1 for the reason that such judgment shows on its face that it was rendered in 1927 in the State of Colorado and was not revived upon personal service within ten years from the date of the original rendition of the judgment for which reason it is inadmissible in evidence under the provision of Section 1038, Revised Statutes of Missouri 1939, and for the further reason such judgment shows upon its face it was not at any time revived upon personal service but was revived in the year 1945 in the State of Colorado upon substituted personal service by service of notice of revival upon the defendant Lamb by registered mail delivered to him in Kansas City, Missouri, and by service of a notice and copy of the motion upon Mr. Lamb in Kansas City, Missouri, by the Deputy Sheriff of Jackson [fol. 24] County, Missouri, and that under the provision of Section 1038 this suit may not be maintained and the evidence of such judgment is inadmissible herein.

Mr. Killiger: May I get one more admission? You will admit that the statute of limitations on this judgment in Colorado was a twenty year statute in accordance with the laws of the State of Colorado, it was properly revived

in that state and is a perfectly good judgment at this time in the State of Colorado?

Mr. Roach: I can't concede that. I do not know the effect of this revival in the State of Colorado. I am inclined to believe in the State of Colorado this judgment would not support an execution, might constitute a lien on real estate in that state because of being bottomed upon substituted personal service but I will have no objection to counsel offering or giving to the Court such laws of Colorado as relates to this matter.

STIPULATION AS TO SERVICE ON REVIVAL PROCEEDINGS

It is definitely stipulated here, is it, Mr. Killiger, the only service on the revival proceedings on the judgment in Colorado, were in 1945, and were by service of notice and a copy of the motion to revive delivered to Mr. Lamb in Kansas City, Missouri, one by registered mail and the other by service by a Deputy Sheriff of Jackson County, Missouri?

Mr. Killiger: I will admit that.

[fol. 25] The Court: Very well. The Court will take the objection with the case inasmuch as it goes to the entire case. At this time the objection is overruled.

Mr. Killiger: I think that is all.

(Which said Plaintiff's Exhibit 1, previously marked for identification, and so offered in evidence, is in the following words and figures:)

(Plaintiff's Exhibit 1 is set forth on Side Pages 6 to 13, inclusive.)

[fol. 26] The Court: I will take this case under advisement, gentlemen.

FINDING AND JUDGMENT

(And thereafter, and on Friday, June 27, 1947, the same being the 40th day of the May, 1947, term of said Court, this cause having been heretofore heard by the Court and taken under advisement, and the Court now being fully advised in the premises, finds the issues in favor of the defendant.)

(Whereupon, judgment was entered as follows:)

Wherefore it is ordered by the Court, that plaintiff take nothing by this action and that defendant have and recover of and from plaintiff his costs herein incurred and expended and have therefor execution.

(And thereafter, and on Wednesday, July 2, 1947, the same being the 44th day of the May, 1947, term of said court, and within ten days after the rendition of said judgment, the plaintiff filed in said court and cause its Motion for New Trial, which was duly endorsed with the name of the court, the number and style of the cause, the title of the paper, and the name of plaintiff's counsel, and further endorsed by the Clerk of said court as follows:)

Filed, Jul. 2, 1947. Thomas J. Gill, Clerk. By J. R. Duff, Deputy.

(Said Plaintiff's Motion for New Trial, omitting caption and signatures, is in the following words and [fol. 27] uses:)

IN CIRCUIT COURT OF JACKSON COUNTY

PLAINTIFF'S MOTION FOR NEW TRIAL

Plaintiff prays the Court to set aside the judgment in favor of defendant and against plaintiff entered herein on June 27th, 1947, and to grant plaintiff a new trial of this action or alternatively to set said judgment aside and to enter judgment herein on the pleadings and evidence submitted in favor of plaintiff and against defendant according to the prayer of plaintiff's petition and as reasons therefor, plaintiff states:

1. The judgment of the Court is against the law and the evidence and the Court erred in failing to enter judgment for plaintiff as prayed, under the uncontroverted facts and the governing law.

2. Because the judgment denied plaintiff and the Colorado judgment under which it claims the right to relief, the security guaranteed by Section 1, Article 4, of the Constitution of the United States, and the judgment is contrary to and in violation thereof.

3. Because the judgment denied full faith and credit to the valid judgment pleaded, proved and relied upon by plaintiff for recovery, and denied plaintiff the security, rights and privileges secured to it under Article 4, Sections 1 and 2 of the Constitution of the United States:

4. Because the judgment is contrary to the law declared [fol. 28] in cases controlling upon the Court under the undisputed evidence among which are:

(a) *Union Fire Ins. Co. vs. Hanson* (May 19, 1944), 180 SW 2d, 265, where a Nebraska judgment rendered December 7, 1932, was revived under the laws of Nebraska more than ten years thereafter, to-wit: on March 9, 1943. Under Nebraska law the judgment would be dormant in five years unless certain things were done. Under the Nebraska laws the judgment was duly revived on March 9, 1943, and was then a good judgment under Nebraska law. In a suit filed thereon in Missouri, the Court held that full faith and credit must be given to the action of the Nebraska District Court, and that the trial court could do nothing else than enforce it in Missouri.

(b) *Kratz vs. Preston*, 52 Mo. App. 251, 256, where a Pennsylvania judgment rendered July 26th, 1861, was revived in that State on February 11, 1891 (more than twenty years thereafter which was more than the Missouri limitation period), upon *scire facias* served on defendant in Missouri, after he removed from Pennsylvania, *HELD*, the *scire facias* was a continuance of the original action in which defendant was personally summoned in Pennsylvania, and that judgment for plaintiff was required in Missouri, under the full faith and credit constitutional clause.

(c) *O'Connell vs. Smith*, 131 SW 2d, 730, (sub. 1 and 2) and *Cook's Estate vs. Brown*, 140 SW 2d, 42, (sub. 1), [fol. 29] (Mo. Sup.) and cases cited therein holding that judgments valid under Illinois laws were entitled to full faith and credit in Missouri, although rendered on *cognovit* notes which the Missouri courts have consistently condemned and held void.

(d) *Sutton vs. Cole*, 155 Mo. 206; 55 SW 1052 *Peak vs. Peak*, 181 SW 394 (Sup. Div. 1) *In Re Jackman's Estate*, 124 SW 2d, 1189 (Sup. Div.) *Collins County*

Bank vs Hughes, 155 Fed. 389 (Colo.) 8th Circuit
White vs Q. R. Evans, 157 Fed 2d 857 (C.A. DC)
M. & A. Lumber vs Greenwood Dist., 249 U. S. 170,
 63 L. Ed. 538 *Milwaukee County vs White Co.*, 296
 U. S. 268, 80 L. Ed. 226, 225 Sub. 7, 227, Sub. 11

5. Because the judgment of the Court erred and contravenes the controlling law declared in *Magnolia Petroleum Co. vs. Hunt*, 320 U. S. 430, 4381, 88 L. Ed. 149, 1c. 154, as follows:

'The full faith and credit clause and the Act of Congress implementing it have, for most purposes, placed a judgment on a different footing from a statute of one state, judicial recognition of which is sought in another. Article 4, Section 1, of the Constitution commands that 'Full Faith and Credit shall be given in each State to the public Acts, Records and judicial proceedings of every other State,' and pro-[fol. 30] vides that Congress may by general laws prescribe the manner in which such Acts, Records, and Proceedings shall be proved, and the Effect thereof.' And Congress has provided that judgments shall (438) have such 'faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they are taken.' Act of May 26, 1790, c 11, 1 Stat 133, as amended, 28 USCA Section 687, 8 FCA title 28, Section 687.' 'From the beginning this Court has held that these provisions have made that which has been adjudicated in one state res judicata to the same extent in every other.'

Citing Cases

'Even though we assume for present purposes that the command of the Constitution and the statute is not all-embracing, and that there may be exceptional cases in which the judgment of one state may not override the laws and policy of another, the Court is the final arbiter of the extent of the exceptions.'

Citing Cases

[fol. 31] And we pointed out in *Williams v. North Carolina supra* (317 U. S. 294, 295, 87 L. Ed. 283,

284, 63 S. Ct. 207, 143 ALR 1273), that 'the actual exceptions have been few and far between' . . .

'We are aware of no such exception in the case of a money judgment rendered in a civil suit. Nor are we aware of any considerations of local policy or law which could rightly be deemed to impair the force and effect which the full faith and credit clause and the Act of Congress require to be given to such a judgment outside the state of its rendition. *Milwaukee County v. M. E. White Co.*, supra (296 U. S. 277, 278, 80 L. Ed. 228, 229, 59 S. Ct. 229).'

'It compels enforcement of a judgment in that forum, even though a suit upon the original cause of action was barred there by limitations, before the judgment was procured, *Christmas v. Russell*, 5 Wall. (US) 290, 18 L. Ed. 475, supra; *Roche v. McDonald*, 275 U. S. 449, 72 L. Ed. 365, 48 S. Ct. 142, 53 ALR 1141.'

'It demands recognition of it even though the statute on which the judgment was founded need not be applied in the state of the forum because in conflict with the laws and policy of that state.'

'The full faith and credit clause thus became a [fol. 32] nationally unifying force. It altered the status of the several states as independent foreign sovereignties, each free to ignore rights and obligations created under the laws or established by the judicial proceedings of the others by making each an integral part of a single nation, in which rights judicially established in any part are given nationwide application.'

Wherefore, plaintiffs prays the judgment of the Court.

IN CIRCUIT COURT OF JACKSON COUNTY

ORDER OVERRULING MOTION FOR NEW TRIAL

(And thereafter, and on September 29, 1947, the same being the 19th day of the September, 1947, term of said court, the said Plaintiff's Motion for New Trial was taken up, heard and overruled by the Court; to which said action

and ruling of the Court, the plaintiff at the time duly excepted and still excepts.)

(And thereafter, and on Monday, October 6, 1947, the same being the 25th day of the September, 1947, term of said court, the plaintiff filed and presented to the Court in said cause its Notice of Appeal, which was duly endorsed with [fol. 33] the name of the court, the number and style of the cause, the title of the paper, and the name of the plaintiff's counsel, and further endorsed by the Clerk of said court as follows:)

"Filed October 6, 1947, Thomas J. Gill, Clerk, Irma L. Helm, Deputy."

(Said Notice of Appeal, omitting caption, is in the following words and figures:)

IN CIRCUIT COURT OF JACKSON COUNTY

"NOTICE OF APPEAL."

Notice is hereby given that Union National Bank of Wichita, plaintiff, above-named, hereby appeals to the Supreme Court of the State of Missouri from the judgment in favor of the defendant and against the plaintiff, entered in this action on the twenty-seventh day of June, 1947, in Division 6 of the Circuit Court of Jackson County, Missouri at Kansas City.

Maurice J. O'Sullivan, Attorney for Plaintiff, address 700 Columbia Bank Bldg.

Dated October 6, 1947.

Plaintiff's motion for new trial was over-ruled September 29, 1947 and this Notice of Appeal is filed and docket fee paid within ten days thereof."

[fol. 34] IN CIRCUIT COURT OF JACKSON COUNTY

ORDER ALLOWING APPEAL

(And afterwards, and on the 6th day of October, 1947, the same being the 25th day of the September, 1947, term of said court, said plaintiff's Notice of Appeal having been duly seen and heard by the Court was by the Court allowed and an appeal granted to said plaintiff to the

Supreme Court of the State of Missouri; and the Court also gave said plaintiff at said time leave to file its Bill of Exceptions within the time required by law.)

IN CIRCUIT COURT OF JACKSON COUNTY

ORDER EXTENDING TIME

(And thereafter, and on Thursday, December 11, 1947, the same being the 26th day of the November, 1947, term of said court, and within the time heretofore allowed by the Court, for good cause shown, the time for filing the Transcript on Appeal in this cause was by the Court extended to on or before the 20th day of March, 1948.)

[fol. 35] ORDER SETTLING TRANSCRIPT ON APPEAL

Now, therefore, the Court being duly advised in the premises, doth find the foregoing to be a correct Transcript on Appeal taken and saved on behalf of the plaintiff herein, and doth now sign the same and doth order that the same may be filed, sealed, and made a part of the record in this cause.

Given under the hand of the judge of said court before whom said proceedings were had on this 5th day of January, 1948.

James W. Broadbuss, Judge of the Circuit Court of Jackson County, Missouri, at Kansas City, Missouri

IN SUPREME COURT OF MISSOURI

Said transcript was filed in the Supreme Court of Missouri within the time required by law.

ARGUMENT AND SUBMISSION

This cause was duly assigned to Division Number One of the Supreme Court of Missouri and was set for oral argument therein and was duly argued by counsel for the re-

spective parties on May 6, 1948, and was taken under advisement by the Court.

[fol. 35a]

[File endorsement omitted]

IN THE SUPREME COURT OF MISSOURI, DIVISION NUMBER ONE,
APRIL SESSION, 1948

No. 40684

THE UNION NATIONAL BANK OF WICHITA, KANSAS, a Corporation, Appellant,

VS.

CARL C. LAMB, Respondent

OPINION—Filed July 12, 1948

Action to recover on a Colorado revived judgment. A trial without a jury resulted in a finding and judgment for defendant and plaintiff appealed. The appeal lies to the supreme court because the amount in dispute exceeds the sum of \$7500. See Art. V, Sec. 3, Constitution.

December 8, 1927, plaintiff obtained a judgment for \$3,493.01 against defendant in the district court of Denver, Colorado. No payment was made on this judgment. October 27, 1945, nearly 18 years after original rendition, the Colorado Judgment was revived by getting extraterritorial personal service upon defendant in Jackson County, Missouri. December 13, 1945, plaintiff filed the present cause to recover on the revived judgment.

Defendant makes two defenses, first, that plaintiff's cause is barred by Sec. 1038 R. S. 1939, Mo. RSA, Sec. 1038, and second, that the judgment of revival in Colorado was not upon personal service as required by Sec. 1038. This section provides: "Every judgment, order or decree of any court of record of the United States, or of this or any other state, territory or country, shall be presumed to be paid and satisfied *after the expiration of ten years from the date of the original rendition thereof*; or if the same has been revived upon *personal service* duly had upon the defendant or defendants therein, then *after ten years from and after such revival*, or in case a payment has been made on such judg-

[fol. 35b] ment, order or decree, and duly entered upon the record thereof, after the expiration of ten years from the last payment so made, and after the expiration of ten years from the date of *the original rendition or revival upon personal service*, or from the date of the last payment, such judgment shall be conclusively presumed to be paid, and no execution, order or process shall issue thereon, nor shall any suit be brought, had or maintained thereon for any purpose whatever" (italics ours).

The Colorado statute of limitation on a judgment is 20 years, and the lien expires in 6 years. 3 Colo. Ann. Stat. 1935, Ch. 93, Sec. 2. This section, among other things, provides that "from and after twenty years from the entry of final judgment in any court of this state, the same shall be considered as satisfied in full, *unless revived as provided by law.*" If the present judgment had not been revived it would have been barred in this state in 10 years from the date of its original rendition, notwithstanding the 20 years limitation of the Colorado statute. See, 1038, *supra*; Northwestern Brewers Supply Co. v. Vorhees (Mo. Sup.), 203 S. W. (2d) 422, and cases therein cited. *The question is, Does Sec. 1038 bar the revived judgment because it was not revived within 10 years from the date of its original rendition the limitation fixed for revival by Sec. 1271 R. S. 1939, Mo. RSA Sec. 1271.* This section is as follows: "The plaintiff or his legal representative may, at any time within ten years, sue out a scire facias to revive a judgment and lien; but after the expiration of ten years from the rendition of the judgment, no scire facias shall issue."

Plaintiff contends that to bar the present revived judgment would be contrary to the full faith and credit provision of the federal Constitution, Art. IV, Sec. 1, which provides: "Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof." But "it has uniformly been held that each of the states of the Union may *pass a law limiting the time within which an* [fol. 35c] *action may be brought on a judgment rendered in another state* without thereby depriving the judgment of the full faith and credit to which it is entitled under the

Constitution of the United States." 11 Am. Jur. Sec. 192, p. 507; 34 C. J., Sec. 1578, p. 1110; Northwestern Brewers Supply Co. v. Vorhees, *supra*. It is the general rule that the *lex fori* governs the limitation of actions within its borders, and that the enforcement of a foreign judgment goes to the remedy and not to its merits or validity under the *lex loci*. "In short the *lex fori* determines the time within which a cause of action shall be enforced." 11 Am. Jur. Secs. 191, 192, pp. 505, 507; Northwestern Brewers Supply Co. v. Vorhees, *supra*.

Now to the question, Does Sec. 1038 bar the revived judgment because it was not revived within 10 years from the date of rendition of the original judgment? We assume, without deciding, for the purposes of this question, that the extraterritorial personal service was valid for revival under Sec. 1038.

Plaintiff cites many cases from this and other jurisdictions, both federal and state. Among these are *Crim. v. Crim*, 162 Mo. 544, 63 S. W. 489, 54 LRA 502; *Morris v. Jones*, 329 U. S. 545, 67 S. Ct. 451, 91 L. Ed. 488, 168 ALR 656; *Milwaukee County v. White Company*, 296 U. S. 268, 56 S. Ct. 229, 80 L. Ed. 220; *Adams v. Saenger et al.*, 303 U. S. 59, 58 S. Ct. 454, 82 L. Ed. 649. It is not necessary to refer to all these cases; none is pertinent to the question of limitation in hand except *Union Fire Ins. Co. v. Hansen*, 237 Mo. App. 1110, 180 S. W. (2d) 265, by the Springfield Court of Appeals, and *Kratz v. Preston*, 52 Mo. App. 251, by the Kansas City Court of Appeals. The Hansen case was on a Nebraska judgment rendered December 7, 1932, and revived March 9, 1943, more than 10 years after original rendition. The trial court found for the plaintiff and the defendant appealed; the judgment was affirmed. The court said: "Article IV, section 1, of the United States Constitution, provides that 'full faith and credit shall be given in each state to the public acts, records and judicial [fol. 35d] proceedings of every other state.' On March 9, 1943, the Nebraska judgment against defendant was duly revived in Nebraska under the laws of Nebraska, as thus certified. It was then a good judgment in Nebraska. Full faith and credit must be given to the action of the district court of Nebraska. The trial court, therefore, could do nothing else than enforce the said Nebraska judgment in

Missouri." No case was cited; limitation was not considered, and Sec. 1038 was not mentioned.

The Kratz case was an action on a Pennsylvania judgment rendered July 26, 1861, and revived February 11, 1891, nearly 30 years after original rendition. What is now Sec. 1038 was Sec. 6796 R. S. 1889, when the Kratz case was decided, and the limitation on a judgment was then 20 years. There was no revival provision in the section at that time. It was held in the Kratz case that limitation began to run from the date of revival and not from the date of the original judgment. What is now Sec. 1038 was amended in 1895, Laws 1895, p. 221, and in 1899, Laws 1899, p. 300. The section in the statute of 1889, as stated, fixed the limitation of a judgment at "twenty years from the date of rendition." Since 1899, the section has not been changed, and as appears in Sec. 1038, the limitation is fixed at "ten years from the date of the *original* rendition" (italics ours). It was in the Act of 1899 that the term *original* was first inserted. Also, it was in the Act of 1899 that the revival provision was first inserted. In view of the language in Sec. 6796 R. S. 1889, "twenty years from date of rendition", and in view of the then absence of any provision as to limitation on a revived judgment, the Kratz case ruling can be understood because the suit on the revived judgment was filed shortly after its rendition. The date when filed does not appear, but the case was decided January 2, 1893, less than two years after the judgment was revived.

Under Sec. 1038 a domestic or foreign judgment is barred in 10 years from the date of its original rendition unless it is revived or payment made, and under Sec. 1271, a domestic judgment, if revived at all, must be revived within "ten years from the rendition of the judgment." It will be noted that Sec. 1271, the revival section, does not say [fol. 35c] "from the original rendition", hence a second, third, etc., revival may be had if within 10 years from the last one. Definitely; it is the law of this state that a foreign judgment, absent revival, or a payment thereon as provided in Sec. 1038, is barred in 10 years from the date of its original rendition regardless of what the limitation period may be under the law of the state where the judgment was rendered. Northwestern Brewers Supply Co. v. Vorhees, supra. And the only reasonable conclusion to

draw is that a revived judgment, domestic or foreign, absent a payment as provided in Sec. 1038, is barred under said section unless the revival was within 10 years from the date of original rendition or, if such is the case, within 10 years from the last revival. In other words, a foreign judgment, original or revived, has the same standing in Missouri, no better, no worse, than a domestic judgment. This does not run counter to the full faith and credit provision of the federal Constitution, because, as we have seen, the enforcement of a foreign judgment goes to the remedy only and that is a matter for the law of the forum.

Our ruling, *supra*, disposes of this appeal, hence it is not necessary to rule the second defense that the service upon defendant for revival of the Colorado judgment was not *personal service* within the meaning of that term in Sec. 1038.

The judgment should be affirmed and it is so ordered.

(Signed) John H. Bradley, Commissioner.

Per CURIAM: The foregoing opinion by Bradley, C., is adopted as the opinion of the Court. All the Judges concur.

Dalton, C., concurs.

Van Osdel, C., concurs.

[fol. 36] Thereafter and within the time required by the Rules of said Court, appellant duly filed "Appellant's Motion to Rehear or to Transfer Cause to Court in Banc."

Said motion (caption and signatures omitted, duly filed as aforesaid was in words and figures as follows:

[fol. 37] IN SUPREME COURT OF MISSOURI

APPELLANT'S MOTION TO REHEAR OR TO TRANSFER CAUSE TO COURT IN BANC

Appellant respectfully prays the Court to set aside the opinion and judgment rendered on July 12, 1948, and to grant a rehearing herein, or alternatively to transfer this cause to the Court *In Banc* for hearing and final determination, because:

I

The Opinion Erred by Denying Full Faith and Credit to the Duly Authenticated Final Money Judgment upon Which

This Suit Was Filed Only Forty-seven Days After the Colorado District Court Rendered Its Judgment of Revival and for Recovery Thereon. The Opinion and Section 1038 R. S., 1939 as Now Construed, Contravene and Are Repugnant to Article IV, Section 1, of the Constitution of the United States to 28 U. S. C. A., Section 687, and to Controlling Decisions of the Supreme Court of the United States, Which Is the Final Arbiter With the Duty to Define and Secure Constitutional Guarantees Against Denial. The Errors in Substantive Federal Law in Material Matters of General Application Is of Grave Concern and Public Importance.

(A)

The opinion inadvertently misconstrued Section 1038, R. S., 1939. It was error to apply it as a conclusive presumption of satisfaction of the original Colorado judgment and not as a statute of limitations. It thereby contravened U. S. Const. Art. IV, Sec. 1 and 28 U. S. C. A. 682, by denial of the contrary adjudication of the Colorado Court duly made under the lex fori. The judgment of October 27, 1945, reviving the original judgment as of that date and for recovery thereon was conclusive upon defendant and precluded a collateral attack, redetermination or denial of full faith and credit thereon.

The full faith and credit clause, rules of comity and res judicata foster public respect for courts, which is the foundation of the due administration of justice. Judgments refusing to enforce valid final judicial acts of other [fol. 38] courts of competent jurisdiction, whether foreign or domestic, which subject the debtor to recovery of money in another forum, are of public concern and invite similar public disrespect of the courts. Subject to limitation laws as a recognized exception, a valid judgment due elsewhere should be recoverable where the debtor may be found. The laws of each state are of equal dignity. The incidences of the laws of the state which the debtor voluntarily elected to accept by his entry before judgment cannot be affected therein by the laws of a sister state. The full faith and credit clause requires mutual recognition of the equal dignity of the laws of each state and of final adjudications thereunder. It prohibits substitution of local laws and policy where the debtor is found for the laws and policy of the state from which the judgment debtor came.

Local laws, policies, states rights or preference for its own laws are not in issue in a suit on a judgment of a sister state. Enforcement of the same rights and liabilities which governed the parties under the laws of the state in which the judgment was rendered is just and should have been granted by comity (15 C. J. S. 836). The duty was mandatory under the full faith and credit clause.

50 C.J.S. 480, 481, 482, Sec. 889 (d), (e) properly states:

(d) "There may be exceptional cases where the full faith and credit clause does not require that recognition be given a judgment of a sister state which is in violation of the laws and policy of the forum, and the Supreme Court of The United States is the final arbiter of such cases.

"There are no exceptions in the case of a money judgment rendered in a civil suit, the policy or law of the forum in which it is sought to enforce such a judgment cannot impair the force and effect which the full faith and credit clause of the federal Constitution and the act of congress require to be given to such a judgment outside the state of its rendition. . . . It compels enforcement of a judgment, even though a suit on the original cause of action, if brought in the forum before judgment was obtained, would have been barred by limitations. A judgment must be recognized, even though the statute on which the judgment is based need not be applied because it is in conflict with the law and policy of the forum."

(e) "In accordance with the general rule, considered supra subdivision b of this section, that a judgment is entitled to the same faith and credit as is accorded it in the state where rendered, a judgment is not subject to collateral attack in another state if not subject to such attack in the state where rendered."

[fol. 39] The opinion, (p. 2, 3), chiefly relied for support upon *Northwestern Brewers Supply Co. vs. Vorhees*, (Mo. Div. 1), 293 S. W. 422; 11 *Am. Juris.* 505, 507, *Secs.* 191, 192 and 34 C. J. Sec. 1578, p. 1110. The *Vorhees* case ruled that Section 1038 is both a statute of limitations and *one creating a presumption of satisfaction as at common law*. It quoted from *M'Elmoyle vs. Cohen*, 13 Pet 312, 10 L. Ed. 177, and *Bacon vs. Howard*, 20 How. 22, 61 U. S. 22, 15 L. Ed. 811.

The opinion herein (p. 2) states "In short the *lex fori* determines the time within which a cause of action shall be enforced." After that correct principle was declared, it was then wholly abandoned.

The *lex fori* governed the time within which the Colorado Court had jurisdiction to render the judgment of revival of October 27, 1945. The Missouri statute had no extra-territorial operation. It could not govern nor control the Colorado proceedings. Missouri courts were without constitutional right to apply its statute as a presumption of satisfaction to the original Colorado judgment. That was a matter exclusively within the jurisdiction of the Colorado Court. The ten year bar of limitation under the Missouri statute had no application to the valid money judgment of revival rendered by the Colorado Court forty seven days before suit was filed thereon in Missouri.

The *Vorhees* case, *M'Elmoyle vs. Cohen and Bacon vs. Howard*, cited therein, were misconstrued. The *Vorhees* case properly ruled that the Missouri ten year statute of limitations barred recovery upon the Wisconsin judgment, which was not revived. Although immaterial, the *Vorhees* case incorrectly ruled that Section 1038, R. S., 1939, created a conclusive presumption of satisfaction. It pointed out that the non-conclusive presumption of payment under the former statute was a mere rule of evidence subject to rebuttal. Amendment of 1895, provided that except in cases of revival or partial payment entered of record, the presumption of satisfaction was conclusive. The amended statute is still but a rule of evidence, although the presumption of satisfaction is made conclusive.

The Colorado judgment of revival and for recovery thereon judicially determined that the original judgment was not satisfied. It adjudged revival thereof with the same force and effect as if it has been originally rendered on October 27, 1945, and for recovery thereon. That judgment became final and defendant was bound thereby. The excerpts next quoted from controlling decisions upholding limitation statutes, demonstrate that they do not rule that [fol. 40] full faith and credit may be denied by applying a statute creating a presumption of payment to the cause of action underlying a final judgment. Cases cited under subdivision (C) affirmatively rule that statutes of similar import contravene Article IV, Section 1 and are void, controlling cases are cited in subdivision (B), which rule that a

judgment of revival is a final judgment within the meaning of the full-faith and credit clause.

The *Worcester Case*, 203 S. W. 2d L. c. 423, 2d, sup. 3, 6, quotes from *M'Elmoye vs. Cohen*, in part as follows:

But the point might have been shortly dismissed with this sage declaration, *that there is no direct constitutional inhibition upon the states, nor any clause in the Constitution from which it can be even plausibly inferred, that the states may not legislate upon the remedy in suits upon the judgments of other states, Exclusive of All Interference With Their Merits.* It being settled that the statute of limitations may bar recoveries upon foreign judgments; that the effect intended to be given under our Constitution to judgments, is, that they are conclusive only as regards the merits; the common law principle then applies to suits upon them, that they must be brought within the period prescribed by the local law, the *lex fori*, or the suit will be barred. (Emphasis ours)

It also quotes, L. c. 423, 424, the following from *Bacon vs. Howard*, 20 How. 22:

But the rules of prescription remain, as before, in the full power of every state. There is no clause in the constitution which restrains this right in each state to legislate upon the remedy in suits on judgments of other states, *Exclusive of All Interference With Their Merits.* (Emphasis ours).

Bank of Alabama vs. Dalton, 9 How. 522, 13 L. Ed. 242, 244-245, clarifies the true rule and declared:

The legislation of Congress amounts to this: that the judgment of another State shall be record evidence of the demand, *and that the defendant, when sued on the judgment, cannot go behind it and controvert the contract, or other cause of action, on which the judgment is founded; that it is evidence of an established demand, which, standing alone, is conclusive between the parties to it.* This is the whole extent to which Congress has gone. As to what further "effect" Congress may give to judgments rendered in one state and sued on in another does not belong to this inquiry; we have to deal with the law as we find it, and not with the extent of

power Congress may have to legislate further in this respect. That the legislation of Congress, so far as it has gone, does not prevent a State from passing acts of limitation to bar suits on judgments rendered in another State, is the settled doctrine of this court. It was established, on mature consideration, in the case of *McElmoyle v. Cohen*, 13 Peters, 312; and to the reasons [fol. 41] given in support of this conclusion we refer."

Allegheny County vs. Maryland Casualty Co., 132 Fed 2d 894, 897, says, sub 5-8:

"But it must be remembered that a judgment is the sentence of the law given by the court as the result of proceedings instituted therein for the redress of an injury. If it is a final judgment it terminates the controversy and either merges into itself or bars the plaintiff's claim. *It thus itself becomes the generating source of new rights and liabilities of the parties. Under the constitution it is entitled to full faith and credit in every American jurisdiction.*" (Emphasis ours).

Deposit Bank vs. Board of Councilmen of Frankfort, 191 U. S. 499, 48 L. Ed. 276, 1 c. 280, 281, ruled:

"The doctrine of estoppel by judgment is founded upon the proposition that all controversies and contentions involved are set at rest by a judgment or decree lawfully rendered which, in its terms, embodied a settlement of the rights of the parties. It would undermine the foundation of the principle upon which it is based if the court might inquire into and revise the reasons which led the court to make the judgment. In such case, nothing would be set at rest by the decree; but the matter supposed to be finally adjudicated, and concerning which the parties had had their day in court, could be reopened and examined, and if the reasons stated were, in the judgment of the court before which the estoppel is pleaded, insufficient, a new judgment could be rendered because of these divergent views, and the whole matter would be at large. In other words, nothing would be settled, and the judgment, unreversed, instead of having the effect of forever settling the rights of the parties, would be but an idle ceremony. We are unable

to find reason or authority supporting the proposition that because a judgment may have been given for wrong reasons or has been subsequently reversed, that it is any the less effective as an estoppel between the parties while in force."

B

The judgment of revival was a final judgment under the lex fori which was conclusive upon the parties. It was entitled to full faith and credit and precluded redetermination or the application of a presumption of payment in Missouri to the underlying cause of action to revive the original judgment.

Dickinson vs. Wilson, 3 How. (U. S.) 57, 11 L. Ed. 491, (cited 47 Am. Juris. 470, Sec. 11, N. 2), ruled:

"The judgment on the first scire facias, although ancillary to the original judgment, and the foundation of the proceeding on the second scire facias, was, nevertheless, a final judgment, and in that count conclusive upon the parties; and imposed an insuperable bar to any plea of either party, whether of law or of fact, designed to go beyond it." (Emphasis ours).

[fol. 42] This court held in *Schneider vs. Maney*, 242 Mo. 26, 145 S. W. 823, 824, that a judgment of revivor "is a recognition of the existence of the original judgment and a continuation of its life." *Mo. & Ark. L. & M. Co. vs. Greenwood*, 249 U. S. 120, 63 L. Ed. 538, ruled that a judgment of revival is a remedy for avoidance of the statute of limitations and to avoid a presumption of payment from lapse of time.

Brown vs. Charez, 181 U. S. 68, 45 L. Ed. 752, 754, ruled that scire facias to revive a judgment was in the nature of an action because the defendant may plead to it and that the averments of the writ are equivalent to a petition or declaration. Such proceedings were held to be within the meaning of "all actions founded upon any judgment" in a New Mexico statute which required such actions to be commenced within seven years. A judgment merged in a judgment of revivor is no more open for review than any other cause of action which is merged in a final judgment.

Continental Nat. Bank vs. J. H. Shelley, 115 A. L. R. 543, 77 Pac. 2d 355, (Utah) in a carefully considered opinion ruled, (115 A. L. R. 1 c. 546):

"The ~~first~~ of the section, so far as is material to the question under consideration, is found in the words, 'the court . . . must revive the original judgment.' To contend that this can mean other than *the original judgment is to be rendered operative and effective is to trifle with words and human understanding*. . . . The clear and unequivocal purport of the language of the last clause effects only the operative or effective date of the original judgment; *that is, changes it from the time of entry of the original judgment to the time of the entry of the order directing revival*." (Emphasis ours).

A similar rule is stated in 49 C. J. S. 1006, sec. 548 and at 1020, Section 549, as follows:

"The revival of a judgment by regular proceedings reinvests it with all the effect and conditions which originally belonged to it, and which have been wholly or partly suspended by lapse of time, change of parties, or other cause."

49 C. J. S. 1006, sec. 548, states:

"A scire facias to revive a judgment is a judicial, but not an original, writ. Although it is in the nature of an action because defendant may plead to it, and has been held to come within the meaning of "action" in some cases it has been classified in substance as a new action, it is more widely held that a proceeding by scire facias to revive a judgment is not an original proceeding, but a mere continuation of the former suit, or in [fol. 43] other words, it is merely a supplementary remedy to aid in the recovery of the debt evidenced by the original judgment."

(C)

Section 1038, R. S. 1938, Mo. R. S. A., Sec. 1038, as construed by the Court, is unconstitutional and void under the controlling decisions cited hereunder, which were inadvertently overlooked and not mentioned.

In *Rpche vs. McDonald*, 275 U. S. 449, 72 L. Ed. 365, 48 S. Ct. 142, Washington's statute was in issue which provided that a judgment should cease to be a charge and that no suit should be had to extend its duration or to continue it in force beyond six years. Roche sued in Oregon on a Washington judgment. Judgment against McDonald was rendered thereon more than six years after the date of the original Washington judgment. Shortly thereafter Roche sued to enforce the Oregon judgment in Washington. The Washington courts sustained McDonald's defense that the Washington statute prohibited recovery because the Oregon judgment was rendered more than six years after the date of the original judgment in Washington. The Washington courts concluded (as in effect does the opinion filed herein) that the judgment of a sister state should be viewed "*in the light of the foundation upon which it rests and the judgment law of our own state.*"

In reversing the Washington courts, Mr. Justice Sanford said:

"It is settled by repeated decisions of this court that the full faith and credit clause of the Constitution required that the judgment of a state court which had jurisdiction of the parties and the subject matter in suit, shall be given in the courts of every other state the same credit, validity and effect, which it has in the state where it was rendered, and be equally conclusive upon the merits; and that *only such defenses as would be good to a suit thereon in that state can be relied on in the courts of any other state.*" (Citing cases) "This rule is applicable where a judgment in one state is based upon a cause of action which arose in the state in which it is sought to be enforced, as well as in other cases; and the judgment, if valid where rendered, *must be enforced in such other state, although repugnant to its own statutes.*" (Citing cases; emphasis ours).

In *Christmas vs. Russell*, 5 Wall. 290, 302, 18 L. Ed. 475, 478, judgment on a Mississippi note was awarded by a Kentucky court after it was barred by the Mississippi statute of limitations. Suit was then filed on the Kentucky judgment in Mississippi. The Mississippi statutes also prohibited actions on judgments rendered by any court without

[fol. 44] the state against any resident of the state, *where the cause of action would have been barred by limitation if suit had been filed thereon in Mississippi*. It was ruled (72 U. S. 301, 302; 18 L. Ed. 1. c. 478:

"Instead of being a statute of limitations in any sense known to the law, the provision, in legal effect, is *but an attempt to give operation to the statute of limitations of that state, in all the other states of the union, by denying the efficacy of any judgment rendered in another state against a citizen of Mississippi for any cause of action which was barred in her tribunals under that law.*"

"It was not competent for any other state to authorize its courts to open the merits and review the cause, or to enact that such a judgment should not receive the same faith and credit that by law it had in the courts of the state from which it was taken." (Emphasis ours).

In *Faulkner vs. Lum*, 210 U. S. 231, 236, 52 L. Ed. 239, 1041, 28 S. Ct. 641, suit on a Missouri judgment was filed in Mississippi. The Missouri judgment was rendered on a contract made in Mississippi to gamble in cotton futures. A Mississippi statute made the contract a misdemeanor and provided that such contracts "*should not be enforced by any court.*" In reversing the Mississippi courts for refusing to accord full faith and credit to the Missouri judgment, the court said:

"The doctrine laid down by Chief Justice Marshall was that the judgment of a state court should have the same credit, validity and effect in every other court in the United States, which it had in the state where it was pronounced and that whatever pleas would be good to a suit thereon in such state and none others, could be pleaded in any other court of the United States."

In *Kenny vs. Supreme Lodge L. O. M.*, 252 U. S. 411, 415; 64 L. Ed. 638, 40 S. Ct. 371, suit on an Alabama judgment was filed in Illinois. The Alabama judgment was on a ~~cause~~ of action which could not be brought or prosecuted under Illinois law. The Illinois statute was held to be unconstitutional and void because it was repugnant to the full faith and credit clause.

Pages 2 and 3 of the opinion state that the enforcement of a foreign judgment goes to the remedy and not to its merits or validity under the *lex loci*, and "In short the *lex fori* determines the time within which a cause of action may be enforced." The opinion fails to apply that rule but upon the contrary *refuses to accord full faith and credit to a final judgment of revival of the Colorado court which was sued upon in Missouri forty seven days after its rendition* [fol. 45] *tion. The *lex fori* of Missouri was thereby substituted for the *lex fori* of Colorado to measure the merits and validity of the cause of action merged in the judgment.*

Section 1038 is unconstitutional and void as so construed. It did not bar the Colorado judgment as a statute of limitation.

Morris vs. Jones, 329 U. S. 545; *Milwaukee County vs. White*, 296 U. S. 268; *Titus vs. Wallick*, 306 U. S. 282; *Adam vs. Saenger*, 303 U. S. 59; *American Express Company vs. Mallins*, 212 U. S. 311; *Broderick vs. Rosner*, 294 U. S. 629, and other cases are cited or quoted on pages 15 to 19 and *Davis vs. Davis*, 305 U. S. 32, is quoted on page 10 of our original brief. The doctrines declared therein are relied upon without further comment. Under the authorities cited herein, the judgment of revival was conclusive as to all the *media concludendi* and was not subject to be impeached, whether right or wrong. The adjudication reviving the original judgment as of October 27, 1945, and for recovery thereon was not open to re-examination.

The error in denying full faith and credit to the valid judgment of a sister state as required under Article IV, Section 1, of the Constitution of the United States and 28 U. S. C. A., Sec. 687, deprived appellant of the constitutional guarantees secured thereby. The material errors in substantive federal law of general application are of grave public importance and impel further consideration by a rehearing or transfer of this cause. The rights of many litigants in this and other states may be jeopardized or lost by inability to appeal if the decision is followed pending review and if a reversal should be directed upon final hearing.

Law reviews have often commented upon the uniformity of the decisions of the federal Supreme Court from the beginning in construing Article IV, Section 1, to require full faith and credit (and nothing less) to be accorded to

judgments for recovery of money rendered by courts of sister states vested with jurisdiction under the *lex fori*. Decisions thereunder involving status as in divorce, custody and similar cases have varied from time to time. (Cf. *Haddock vs. Haddock*; 1st and 2nd *Williams vs. North Carolina* cases). The many cases reviewed under this section to maintain such uniformity and to suppress decisions [fol. 46] contributing further conflicts to the conflict of laws thereunder, are indicative of the public importance of an indisputably correct decision of the questions presented.

A rehearing or transfer of this cause is therefore respectfully prayed.

(Signed) Maurice J. O'Sullivan, John G. Killiger, Jr., 700 Columbia Bank Building, 921 Walnut Street, Kansas City, Missouri, Attorneys for Appellant.

Service acknowledged and copy received July 26, 1948.

(Signed) Cornelius Roach, Attorney for Respondent

[fol. 47] IN SUPREME COURT OF MISSOURI

ORDER OVERRULING MOTION TO REHEAR OR TO TRANSFER TO COURT EN BANC—Sept. 13, 1948

Now at this day, the Court having seen and fully considered the motion of the appellant for a rehearing in the above-entitled cause, or to transfer said cause to the Court en Banc, doth order that said motion be, and the same is hereby overruled.

[fol. 48] IN SUPREME COURT OF MISSOURI

RECITAL AS TO APPEAL PAPERS

On December 13, 1948, Appellant filed in the Supreme Court of Missouri, its "Petition for Allowance of Appeal to the Supreme Court of the United States, addressed to the Honorable Laurence M. Hyde, Acting Chief Justice of the Supreme Court of Missouri, together with its "Jurisdictional Statement," and Bond in due form, in the penal sum of Five Hundred Dollars signed by Appellant as principal

and by Maurice J. O'Sullivan and John G. Killiger, Jr., as sureties. Upon due consideration thereof, there was made and entered the following:

Order

On this 13th day of December, 1948, on reading the petition of the Union National Bank of Wichita, Kansas, a corporation, the appellant herein, praying for an order herein allowing its appeal to the Supreme Court of the United States from the Supreme Court of the State of Missouri, and the record of said cause having been considered,

It Is Hereby Ordered that an appeal be and is hereby allowed to the Supreme Court of the United States from the Supreme Court of the State of Missouri, as prayed in said petition and the Clerk of the Supreme Court of the State of Missouri, shall prepare and certify a transcript of the record and proceedings in the above entitled cause and transmit same to the Supreme Court of the United States within 40 days from the date hereof.

It Is Further Ordered that bond for security for costs be given in the sum of Five Hundred Dollars, and the undertaking heretofore furnished by appellant in said sum be and is hereby approved.

Given this 13th day of December, 1948.

(Signed) Laurence M. Hyde, Acting Chief Justice
of the Supreme Court of Missouri.

Said Petition for Allowance of Appeal and Jurisdictional Statement, captions and signatures omitted; are in words and figures as follows:

[fol. 49]

[File endorsement omitted]

IN THE SUPREME COURT OF MISSOURI

[Title omitted]

ORDER ALLOWING APPEAL—Filed December 13, 1948

On this 13th day of December, 1948, on reading the petition of the Union National Bank of Wichita, Kansas, a corporation, the appellant herein, praying for an order herein allowing its appeal to the Supreme Court of the United

States from the Supreme Court of the State of Missouri, and the record of said cause having been considered.

It Is Hereby Ordered that an appeal be and is hereby allowed to the Supreme Court of the United States from the Supreme Court of the State of Missouri as prayed in said petition and the Clerk of the Supreme Court of the State of Missouri shall prepare and certify a transcript of the record and proceedings in the above entitled cause and transmit same to the Supreme Court of the United States within 40 days from the date hereof.

It Is Further Ordered that bond for security for costs be given in the sum of Five Hundred Dollars, and the undertaking heretofore furnished by appellant in said sum be and is hereby approved.

Given this 13th day of December, 1948.

Laurence M. Hyde, Acting Chief Justice of the Supreme Court of the State of Missouri.

[fol. 50]

[File endorsement omitted]

IN THE SUPREME COURT OF MISSOURI

[Title omitted]

PETITION FOR ALLOWANCE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed December 13, 1948

To the Honorable Laurence M. Hyde, Acting Chief Justice of the Supreme Court of Missouri.

The appellant respectfully prays for the allowance of an appeal herein to the Supreme Court of the United States.

1. Division One of this court filed an opinion on appeal on July 12, 1948, which is reported in 213 S.W. 2d 416. It overruled appellant's motion for rehearing and to transfer to the court In Banc, on September 13, 1948. This constituted final action of the court of last resort in the State of Missouri. This application is filed within ninety days as required by U.S.C.A., Title 28, Section 2101, as revised.

2. The opinion of this court affirmed the judgment of the Circuit Court of Jackson County, which denied appellant recovery upon a judgment of revivor, duly authenticated under U. S. C. A., Title 28, Section 687. The judgment of

revivor dated October 27, 1945, revived a judgment rendered December 8, 1927, for \$3,493.01. It was duly rendered under the laws of Colorado by the Colorado District Court at Denver. The Colorado statutes cited in the opinion were duly pleaded. The petition also pleaded that the judgment of revivor was entitled to full faith and credit under Section I, Article IV, of the Constitution of the United States. Appellant was entitled to execution on the judgment of revivor under Colorado laws.

3. The judgment below and the opinion filed herein denied your petitioner the benefit of the constitutional command (U. S. Const. Art. IV, Sec. 1), that the Colorado final judgment of revivor shall receive in the courts of Missouri such faith and credit as it was entitled to receive in Colorado.

4. The right asserted by petitioner to have the Colorado judgment enforced in the Missouri courts arises under the Constitution and a statute of the United States. (U. S. Const. Art. IV, Sec. 1, U. S. C. A. Title 28, Sec. 687, now Title 28, Sections 1738, 1739, revised and effective September 1, 1948). Since the existence of the federal right turns upon the legal effect of the proceedings in Colorado and the validity of the judgment there, the ruling of the Missouri courts are reviewable by the Supreme Court of the United States. (*Adams vs. Saenger*, 303 U. S. 59, 64; 82 L. ed. 649, 652; *Titus vs. Wallick*, 306 U. S. 282, 287, 288; 83 L. ed. 653, 657.)

5. This action was on the valid judgment of revivor and not upon the original judgment which gave rise to it, for which the constitutional mandate requires full faith and credit to be given in another state, although the forum would have been under no duty to entertain the action on which the judgment was founded.

Titus vs. Wallick, 306 U. S. 282, 291; 83 L. ed. 653, 659, and cases therein cited.

6. The opinion filed herein erroneously construed Section 1038, R.S. Mo. 1939, and applied it ex-territorially as a statute creating a conclusive presumption of satisfaction of the original Colorado judgment and not as a statute of limitations. Section 1038 was held to constitute a statute of both types in *Northwestern Brewers Supply Co. vs. Vorhees* (Mo. Sup.) 203 S. W. 2d, 422.

7. The opinion thereby refused to recognize the validity of the Colorado judgment of revivor which was duly rendered under the laws of Colorado. It denied full faith and credit thereto, by extritorially applying the Missouri statute to the cause of action underlying the Colorado final judgment of revivor.

The validity of Section 1038, R. S. Mo. 1939, as so construed; on the ground of its being repugnant to the U. S. Const. Art. V, Section 1, was directly drawn in question and the decision erroneously held in favor of its validity. [fol. 52] A real is therefore the proper remedy under U. S. C. A., Title 28, Section 1257, as revised and effective September 1, 1948.

8. The federal constitutional and statutory questions were directly involved. They are real and substantial and were expressly ruled upon in the opinion, pages 2, 3 and 4, where it was held that Section 1038 as construed, was not repugnant to U. S. Const. Art. IV, Section 1; or to U. S. C. A. Title 28, Section 687, now sections 1738 and 1739, as revised and effective September 1, 1948.

9. The denial of full faith and credit under U. S. Const. Art. IV, Section 1, and under U. S. C. A., Title 28, Sections 687, (now Title 28, Sections 1738, 1739, revised and effective September 1, 1948), was duly raised by appellant in its motion for new trial filed in the Circuit Court (Tr. 30-35) and in its motion for rehearing and to transfer to the court in Banc filed in this court. The right of the Colorado judgment of revivor to full faith and credit was pleaded in the original petition filed. (Tr. 1.)

10. Petitioner herewith files its separate jurisdictional statement; a bond for costs and a form of citation directed to counsel for respondent and an assignment of errors in conformity with U. S. Supreme Court rules 12 and 36. A supersedeas bond is not deemed necessary because petitioner was the losing party.

Wherefore, your petitioner respectfully prays that its appeal be allowed to the Supreme Court of the United States as provided by law.

Maurice J. O'Sullivan, John G. Killiger, Jr., Attorneys for Petitioner, 700 Columbia Bank Building, Kansas City, Missouri.

[fols. 52-63] Citation in usual form showing service on Fred L. Howard, filed December 13, 1948, omitted in printing.

[fols. 64-65] Bond on appeal for \$500.00, approved and filed December 13, 1948, omitted in printing.

[fol. 66] IN SUPREME COURT OF MISSOURI

ACKNOWLEDGMENT OF SERVICE

A citation to respondent in due form was duly signed by said Acting Chief Justice of the Supreme Court of Missouri on the 13th day of December, 1948, which was duly returned to the Clerk of this Court on December 17, 1948, with the following indorsed thereon:

"Due service of the foregoing citation, and receipt of a copy of Petition for Allowance of Appeal; Jurisdictional Statement; Order allowing Appeal, Bond on Appeal and this Citation is hereby acknowledged this 16th day of December, 1948.

(S.) Roach, Brenner & Wimmell, by Fred L. Howard, Attorneys for Respondent, Carl C. Lamb.

IN SUPREME COURT OF MISSOURI.

STIPULATION AND PRAECIPE FOR TRANSCRIPT OF RECORD—
Filed December 21, 1948.

It is stipulated and agreed by the parties hereto that the foregoing shall constitute a sufficient transcript of the record on appeal to present the matters in issue for hearing and determination in the Supreme Court of the United States.

The Clerk is requested to prepare and certify same as the transcript of the record on appeal and to transmit same

to the Supreme Court of the United States under his hand and the seal of the Supreme Court of Missouri.

[fol. 67] Counsel for Respondent waives statement directing their attention to the provisions of Paragraph 3 of Rule 12 of the Supreme Court of the United States.

Maurice J. O'Sullivan, 700 Columbia Bank Building,
Kansas City, Missouri, Attorney for Appellant.
[not legible], 2700 Fidelity Trust Building, Kan-
sas City, Missouri, Attorney for Respondent.

[fols. 68-71] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 72] IN THE SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND STIPULATION
AS TO PRINTING OF RECORD—Filed February 8, 1949

The parties stipulate that printing the entire transcript as certified by the Clerk of the Supreme Court of Missouri is necessary for consideration of this appeal and that the "Assignments of Error upon which Appellant expects to rely" as printed on pages 6 and 7 of "Statement as to Jurisdiction", shall be deemed to be the statement of points upon which Appellant intends to rely under Rule 13, paragraph 9.

February 7, 1949.

Maurice J. O'Sullivan, Attorney for Appellant.

Daniel C. Brenner, Attorney for Respondent.

[fol. 72a] [File endorsement omitted]

[fol. 73] SUPREME COURT OF THE UNITED STATES

ORDER POSTPONING FURTHER CONSIDERATION OF THE QUES-
TION OF JURISDICTION ETC.—January 31, 1949

The statement of jurisdiction in this case having been submitted and considered by the Court, further considera-

tion of the question of the jurisdiction of this Court is postponed to the hearing of the case on the merits. Counsel are requested to discuss on briefs and oral argument the question whether the application for appeal was timely.

Endorsed on Cover: File No. 5002 Missouri Supreme Court, Term No. 300. The Union National Bank of Wichita, Kansas, Appellant, vs. Carl C. Landis. Filed January 5, 1949. Term No. 500 O. T. 1948.

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